

**REMARKS**

Applicants thank the Examiner for total consideration given the present application. Claims 1-9 were pending prior to the Office Action. Claims 10-18 have been added through this Reply. Thus, claims 1-18 are currently pending of which claims 1, 6-8, and 10-17 are independent. Claims 1 and 6-8 have been amended through this Reply. Applicants respectfully request reconsideration of the rejected claims in light of the remarks presented herein, and earnestly seek timely allowance of all pending claims.

**Objection to the Specification**

The Abstract of the Disclosure is objected to as allegedly being non-narrative of the disclosure. The abstract has been amended to address this issue. Accordingly, it is respectfully requested to withdraw this objection.

**Objection to the Claims**

Claim 8 stands objected for a minor informality. Both the Specification and claim has been amended to replace “RTSP” with “real-time streaming protocol (RTSP)”. Accordingly, it is respectfully requested to withdraw this objection.

**Claim Rejection - 35 U.S.C. § 101**

Claims 1-9 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Particularly, the Examiner alleges that these claims are directed to system comprising “software per se”. Applicants respectfully traverse this rejection.

First, it is respectfully submitted that the Examiner’s characterization of the claimed invention as a system comprising “software per se” is totally illogical. The Examiner acknowledges that the claimed invention is directed to a “system”. A “system” by its definition is a “physical object” or a “machine”, which are statutory under 35 U.S.C. § 101. Such system simply cannot merely comprise “software per se” as alleged by the Examiner.

Second, independent claims 1, 6, and 7 are each directed to a media delivering “apparatus” which comprises “a parameter acquiring unit”; “a transmission-data generating unit”; a data transmitting unit”; and “a media communication unit” wherein each of these units

performs specific functionality. Independent claim 8 is directed to a media receiving “apparatus” which comprises “a data receiving unit”; “a data analyzing unit”; “an RTSP communication unit”; and “a media display unit” transmission-data generating unit”; a data transmitting unit”; and “a media communication unit” wherein each of these units performs specific functionality. All of the above-identified units are “physical objects” not “software per se” as alleged by the Examiner.

Therefore, for at least these reasons, it is respectfully submitted that claims 1-9 are statutory under 35 U.S.C. § 101. If the Examiner continues to maintain this rejection, the Examiner is requested to provide detail explanations as to why the claims are non-statutory. A mere statement that the claims are “software per se” without providing any evidence is not sufficient to allege that the claims are non-statutory.

Accordingly, it is respectfully requested to withdraw this rejection.

### **35 U.S.C. § 102 Rejection- Shinohara**

Claims 1-9 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Shinohara (US 7,310,514 B2). This rejection, insofar as it pertains to the presently pending claims, is respectfully traversed.

For a Section 102 rejection to be proper, the cited reference must teach or suggest each and every claimed element. See M.P.E.P. 2131; M.P.E.P. 706.02. Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

Amended independent claims 1, 6, and 7 are each directed to a “media delivering apparatus” which comprises, *inter alia*, “a parameter acquiring unit for acquiring **both** a communication capability of said network and a receiving capability of said media receiving apparatus.” (*Emphasis added.*) It is respectfully submitted that Shinohara fails to teach or suggest the above-identified claim feature.

Shinohara merely discloses a conventional multimedia communication system in which a media delivering apparatus, such as mobile telephone 10<sub>1</sub>, sends multimedia messages to a media receiving apparatus, such as mobile telephones 10<sub>2</sub>-10<sub>4</sub>, via a network 60. (*See Fig. 3.*)

For example, when each of mobile telephones 10<sub>1</sub>-10<sub>4</sub> as shown in Fig. 3 is first connected to network 60 upon turning on the power supply, information regarding the media types and formats that can currently be received as messages is transmitted to server 30. Each of mobile telephones 10<sub>1</sub>-10<sub>4</sub> transmits in any way new information regarding the processing capability for each media type to server 30 when an external terminal is connected and the processing capability for each media type changes while the power supply is turned on. (*See col. 6, lines 29-38.*)

The server 30 first determines whether the multimedia message that is to be transmitted by mobile telephone 10<sub>1</sub> can be received at transmission-destination mobile telephones 10<sub>2</sub>-10<sub>4</sub>, and then notifies mobile telephone 10<sub>1</sub> of these determination results. (*See col. 7, lines 6-10.*)

Shinohara is distinguished from the claimed invention in that nowhere does Shinohara teach or suggest that the media delivering apparatus (mobile telephone 10<sub>1</sub>) includes a parameter acquiring unit which acquires **communication capability of network 60** via which multimedia message may be sent to mobile telephones 10<sub>2</sub>-10<sub>4</sub>. Shinohara merely suggests that mobile telephone 10<sub>1</sub> may require processing capability of mobile telephones 10<sub>2</sub>-10<sub>4</sub> to determine whether to send multimedia message based on the results provided by server 30. Neither the cited portion nor any other portions of Shinohara teaches or suggests that mobile telephone 10<sub>1</sub> acquires **communication capability of network 60**.

Therefore, for at least these reasons, Shinohara is distinguishable from claims 1, 6, and 7.

Independent claim 8 is directed to a media receiving apparatus which comprises a data receiving unit for receiving metadata based on “a degree of media importance”, “communication capability of said network” and “receiving capability” of the media receiving apparatus. As demonstrated above, during transmission of multimedia messages from mobile telephone 10<sub>1</sub> to mobile telephones 10<sub>2</sub>-10<sub>4</sub>, mobile telephone 10<sub>1</sub> may receive processing capability of mobile telephones 10<sub>2</sub>-10<sub>4</sub> (media receiving apparatus) to determine whether to send the multimedia

messages to these receiving apparatus. None of these media receiving apparatuses (mobile telephones 10<sub>2</sub>-10<sub>4</sub>) include a data receiving unit for receiving metadata based on **communication capability of network 60.**

Therefore, for at least these reasons, Shinohara is distinguishable from claim 8.

Accordingly, it is respectfully submitted that independent claims 1 and 6-7 are allowable over Shinohara. Claims 2-5 and 9 are at least allowable by virtue of their dependency on allowable independent claim and further in view of novel features recited therein.

**New Claims**

New claims 10-18 are directed to method claims corresponding to apparatus claims 1-9. It is respectfully submitted that Shinohara fails to teach or suggest a step of receiving communication capability of a network as recited in each of the independent claims 10 and 15-17. Accordingly, it is respectfully submitted that new claims 10-18 are allowable over Shinohara.

**Conclusion**

In view of the above remarks, it is believed that all pending claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Ali M. Imam Reg. No. 58,755 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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